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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,784	01/08/2002	Kjell Olmarker	003300-872	8785
21839	7590	02/11/2004		
BURNS DOANE SWECKER & MATHIS L L P POST OFFICE BOX 1404 ALEXANDRIA, VA 22313-1404			EXAMINER BELYAVSKYI, MICHAIL A	
			ART UNIT 1644	PAPER NUMBER
DATE MAILED: 02/11/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/980,784

Applicant(s)

OLMARKER ET AL.

Examiner

Michail A Belyavskyi

Art Unit

1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 December 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-8 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. Applicant's amendment , filed 12/06/2001 is acknowledged.

*Claims 1-8 are pending.*

#### ***Restriction Requirement***

2. Restriction to one of the following inventions is required under 35 U.S.C. § 121:
- I. Claim 1, drawn to a kit for diagnosing disc herniation, comprising antigens from nucleus pulposus cells, classified in Class 435, subclasses 7.1 and 810.
  - II. Claims 2 and 6, drawn to a method for treatment disc herniation comprising administering *an anti-antibody to antibodies* of nucleus pulposus cells , classified in Class 424, subclass 93.1.
  - III. Claims 3 and 7, drawn to a method for treatment disc herniation comprising administering *false antibody* to nucleus pulposus cells , classified in Class 424, subclass 93.1.
  - IV. Claims 4 and 8, drawn to a method for treatment disc herniation comprising administering a *soluble antigens* from nucleus pulposus cells , classified in Class 424, subclass 184.1.
  - V. Claim 4 drawn to a method for the diagnosis of disc herniation comprising administering a *soluble antigens* from nucleus pulposus cells , classified in Class 424, subclass 184.1.
  - VI. Claim 5, drawn to a method for treatment disc herniation comprising administering a *compound* that prevents the binding of serum antibodies to nucleus pulposus cells to bind to nucleus pulposus , classified in Class 424, subclass 184.1.
3. Groups II - VI are different methods. These inventions are different with respect to ingredients, method steps, and endpoints which require non-coextensive searches ; therefore, each method is patentably distinct.

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4. These inventions are distinct for the reasons given above. In addition, they have acquired a separate status in the art as shown by different classification and/or recognized divergent subject matter. Further, even though in some cases the classification is shared, a different field of search would be required based upon the structurally distinct products recited and the various methods of use comprising distinct method steps. Moreover, a prior art search also requires a literature search. It is an undue burden for the examiner to search more than one invention. Therefore restriction for examination purposes as indicated is proper.

5. Applicant is advised that a response to this requirement to be complete must include an identification of the elected group and a listing of all claims readable thereon, including any claims subsequently added even though the requirement be traversed.

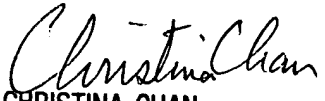
6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

A telephone call was made to Benton S Duffett on January 30, 2004 to request an oral election to the above restriction requirement, but did not result in an election being made.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michail Belyavskiy whose telephone number is 571/ 272-0840. The examiner can normally be reached Monday through Friday from 9:00 AM to 5:30 PM. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on 571/ 272-0841. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1600 receptionist whose telephone number is (703) 308-0196.

Papers related to this application may be submitted to Technology Center 1600 by facsimile transmission. Papers should be faxed to Technology Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center telephone number is 703/872-9306.

Michail Belyavskiy, Ph.D.  
Patent Examiner  
Technology Center 1600  
February 4, 2004

  
CHRISTINA CHAN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600